

**BEFORE THE
STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
OFFICE OF ADMINISTRATIVE LAW**

In the Matter of the Filing by	:	BPU Docket No. TR97040228
Bell Atlantic-New Jersey, Inc. For	:	OAL Docket No. PUCOT 05760-997N
Revisions to Tariff B.P.U. No. 2,	:	
Access Service Providing for Rates	:	
and Charges in Connection with	:	
the Provision of	:	
IntraLATA Presubscription	:	

BEFORE: HONORABLE MUMTAZ BARI-BROWN
 Administrative Law Judge

REPLY BRIEF OF THE
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

**This Document Has Been Redacted of Information That
Bell Atlantic-New Jersey Considers Proprietary and Confidential**

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Order of Interim Approval, *I/M/O/ the Filing by Bell Atlantic - New Jersey, Inc. For Revisions to Tariff B. P. U. No. 2 Access Services Providing for Rates and Charges in Connection With The Provisions of IntraLATA Presubscription*, Docket No. TR97040228 (May 22, 1997)2

Order, *I/M/O Long-Term Telephone Number Portability Tariff filing of Ameritech Operating Companies; GTE Systems Telephone Companies; GTE Telephone Operating Companies; Pacific Bell; Southwestern Bell Telephone Company*, DA 99-374, *Order Designating Issues for Investigation* (released February 26, 1999)5-8

Codes

N.J.A.C. 1:1-15.5(b)3

N.J.A.C. 14:10-10.4(b)4

INTRODUCTION

The Division of the Ratepayer Advocate (“Ratepayer Advocate”), submits this Reply Brief in response to Bell Atlantic - New Jersey, Inc.’s (“BA-NJ”) Initial Brief. Upon review of BA-NJ’s brief and the review of the record in this proceeding, the Ratepayer Advocate submits that only one conclusion is warranted and appropriate. BA-NJ did not meet its burden of proving that (1) BA-NJ’s equal access recovery charge (“EARC”) of **[Begin BA-NJ Proprietary]** **[End BA-NJ Proprietary]** recovers only direct incremental costs and (2) the primary interexchange carrier (“PIC”) charges as proposed by BA-NJ are just, fair, and reasonable. We ask that Your Honor issue a Recommended Decision consistent with the eight (8) proposed findings of fact set forth in the Ratepayer Advocate’s Initial Brief.¹

¹ See pages 10-11, of the Initial Brief of the New Jersey Ratepayer Advocate which recommends eight (8) factual

findings:

- (1) BA-NJ has failed to meet its burden of proof regarding the appropriate PIC Charges for intraLATA toll presubscription in this proceeding.
- (2) BA-NJ's cost study supporting its rates for PIC charges should be given no weight because the cost for making PIC changes is based upon triple hearsay and otherwise violates the residuum rule.
- (3) PIC charges should be set no higher than the rates recommended by the Ratepayer Advocate in its prefiled direct testimony.
- (4) BA-NJ has failed to show that it is only recovering the direct incremental costs associated with implementation of intraLATA Toll presubscription.
- (5) BA-NJ has failed to provide sufficient information to thoroughly review and to analyze each rate element for which it seeks recovery under EARC; specifically BA-NJ has failed to support recovery in the amounts claimed for Network costs which include switch translation and switch software costs; customer sales costs which include educational call costs, training costs, new method and procedures costs; project team costs; total one time costs; and annual investment costs.
- (6) BA-NJ is seeking to recover general upgrade costs, advancement costs and other incidental expenses not directly related to IntraLATA Toll presubscription.
- (7) The EARC should be revised to deduct costs associated with various adjustments recommended by the Ratepayer Advocate.
- (8) If an annual true-up is required, such annual true-up shall be in accordance with AT&T's true-up proposal.
- (9) BA-NJ must make refunds with interest to all customers who made PIC changes at the interim PIC rates.

Specifically, the Ratepayer Advocate believes that BA-NJ did not show that the amount sought and claimed as reimbursable in the EARC includes only the direct incremental costs for implementation of IntraLATA toll presubscription in New Jersey. Despite two prior substantial reductions in the EARC rate **[Begin BA-NJ Proprietary]** **[End BA-NJ Proprietary]** BA-NJ's third EARC cost reduction remains overstated and improperly includes general upgrade costs, advancement costs and incidental costs. Such costs are not recoverable as direct incremental costs. Indeed, the Ratepayer Advocate believes that additional and more substantial reductions in the EARC rate are required. Most, if not all, of BA-NJ's cost data proffered and submitted in this proceeding is deficient and inadequate to permit a thorough review and analysis of each rate element as required by the *Order of Interim Approval*.² As noted in our Initial Brief at pages 7-9, the FCC mandated the use of a direct incremental cost methodology as defined in the Long-Term Number Portability ("LNP") proceeding for toll dialing parity. This means that under the FCC's rules, general upgrade costs, advancement of costs and incidental costs are not direct incremental costs of EARC and cannot be recovered as eligible direct costs in this IntraLATA toll presubscription proceeding. Lastly, the Ratepayer Advocate believes that BA-NJ has not shown that its PIC charges are fair, just, and reasonable.

BA-NJ's Cost Data for PIC Charges is not Current, Accurate or Complete.

² On May 22, 1997, the Board approved the tariff as an interim tariff subject to true-up and refund, issued its *Order of Interim Approval*, and directed the institution of a proceeding to determine the appropriate rates, terms and conditions, primary interexchange carrier ("PIC") charges, and EARC charges on a permanent basis.

BA-NJ argues that its PIC charges are just and reasonable. However, the facts in the record show otherwise. The primary driver of cost for PIC charges is service representative times.³ BA-NJ cannot and does not dispute that the amount of time incurred by service representatives to make a PIC change is material in determining the direct cost for a PIC change. However, the only testimony that BA-NJ can provide to substantiate its estimates for making manual PIC changes is triple hearsay anecdotal evidence about a 1990 study which cannot be found or produced. It is clear that as a matter of law, BA-NJ has presented no legally competent evidence to support the alleged service representative times on which its cost study is grounded. Since BA-NJ has no competent or admissible evidence supporting the amount of time incurred by service representatives, BA-NJ has not met the requirements of the “Residuum Rule” and its entire cost study should be rejected. See N.J.A.C. 1:1-15.5(b). BA-NJ’s data underlying its PIC cost study, despite BA-NJ’s argument to the contrary, is neither current, complete nor accurate.

In an attempt to bolster the accuracy of its cost study, BA-NJ asserts that an adjustment for additional lines (second lines as opposed to primary lines) was included and factored into its cost study; but it cannot establish either the amount of the adjustment or the ratio of secondary to primary lines used in its cost study. Contrary to and inconsistent with this second line position, BA-NJ argues that when PIC changes are made on multiple lines, BA-NJ should be permitted to charge a PIC charge of \$5.00 per line. By way of example, if two lines are involved, BA-NJ would charge \$10.00. Even more surprisingly, BA-NJ attempts to disavow a **1993** cost study filed by Bell Atlantic with the FCC that shows substantially lower service representative times, while arguing that the **1990** study was more rigorous and reliable. This is not the case.

³ See Ratepayer Advocate’s Initial Brief at page 14 for discussion of “Residuum Rule.”

BA-NJ's empty conclusory statement of its belief that the filings submitted into this record are fully compliant with all Board imposed requirements is simply not supported by the record.

The record reflects that BA-NJ had in its possession more current and complete data on the actual time it takes to make a PIC change, but it chose not to revise its PIC cost study. As discussed by the Ratepayer Advocate in its Initial Brief, BA-NJ's Tone Study, a valid statistical study, has the necessary information to determine the actual time spent by service representatives in making PIC changes today, as opposed to what they may have been in 1990. As suggested by the Ratepayer Advocate, Your Honer should draw a negative inference from BA-NJ's refusal to update its PIC cost study. That negative inference is that an updated cost study would show substantially lower costs. The Ratepayer Advocate's initial review of BA-NJ's direct costs showed that a reduction of approximately 40% to BA-NJ's direct cost figure was warranted. The Ratepayer Advocate recalculated rates using the Tone Study and those recalculated rates confirm that PIC rates should be no higher than the rates proposed by the Ratepayer Advocate.⁴ See Attachment 7 to Initial Brief.

BA-NJ's Proposed EARC Recovery Charge is Inflated and Includes Non-Eligible Costs.

N.J.A.C. 14:10-10.4(b) limits the recovery of EARC costs to the following:

The only costs to be included in the EARC as described in (a) above are the direct incremental costs associated with the implementation of intraLATA toll presubscription, with no costs included that would have been incurred without its implementation.

⁴ The contribution sought by BA-NJ is excessive and unreasonable. PIC change is a monopoly service that is only available from BA-NJ. As a monopoly service, no more than 10% contribution for G&A and 10% for profit is appropriate.

N.J.A.C. 14:10-10.4(b) imposes a “but for” test to be used in determining whether a specific cost can qualify as a direct incremental cost, an eligible cost, and thus qualifies for inclusion in the EARC recovery mechanism. As a “but for” test, the Ratepayer Advocate submits that in order for costs to be eligible for recovery in the EARC, BA-NJ bears the burden of proving that a cost is eligible for inclusion as a direct incremental cost. That burden of proof requires BA-NJ to demonstrate that it meets two tests. BA-NJ must show that these costs: (1) would not have been incurred “but for” the implementation of presubscription, and (2) were incurred for the provision of presubscription service.⁵ Although this test was initially adopted for use in apportioning costs for LNP, the FCC requires that this two-part test be applied to determine eligible costs for intraLATA toll presubscription recovery.⁶ As a result, the FCC requires that general upgrade costs, advance costs, and incidental costs be excluded from recovery as eligible direct incremental costs.⁷

The FCC recently reviewed the LNP tariff filing of five Local Exchange Carriers (“LEC”) for compliance with its two-part test. As a result of that review, the FCC concluded that a LEC must provide detailed support that is adequate and permits the FCC to determine if the cost is an eligible

⁵ See Exhibit B at ¶ 10 which sets forth the FCC’s two-part test for identifying directly related costs for purposes of LNP implementation.

⁶ See Exhibit C at ¶ 92 and page 8 of the Ratepayer Advocate’s Initial Brief.

⁷ See footnote 21 for the FCC’s discussion of why these costs are not eligible for recovery.

cost for recovery. Specifically, the FCC expanded and broadened the cost support requirements for Operations Support Service (“OSS”) systems, calculation of signaling and switching costs, and generic upgrade cost allocations.⁸

⁸ See *I/M/O Long-Term Telephone Number Portability Tariff* filing of Ameritech Operating Companies; GTE Systems Telephone Companies; GTE Telephone Operating Companies; Pacific Bell; Southwestern Bell Telephone Company, DA 99-374, *Order Designating Issues for Investigation* (released February 26, 1999) (*Investigation Order*). Attached hereto as Exhibit A.

For OSS recovery, the FCC reaffirms that incremental OSS costs are defined as the difference between the cost of the OSS upgrade without number portability functionality and the total cost of the upgrades with number portability functionality.⁹ To evaluate a LEC's compliance with the FCC's cost recovery standards, the FCC requires an itemized list of OSS costs, arranged by functional area (for example, provisioning, maintenance, repair, billing, etc.). In addition, for each OSS modification or augmentation, the FCC requires the LEC to provide¹⁰:

- (1) the total cost;
- (2) the cost assigned to number portability;
- (3) the cost allocations among number portability services;
- (4) an explanation of how each OSS modification relates to performing queries;
- (5) an explanation of how each OSS modification relates to porting numbers between carriers;
- (6) an explanation of how each OSS modification relates to any other number portability function;
- (7) the basis for cost allocations between number portability and non-number portability services; and
- (8) the basis for cost allocations among number portability services.

⁹ See *Investigation Order* at ¶ 2; whenever there are references to number portability, one should substitute intraLATA presubscription. See footnote 5 above.

¹⁰ *Id.* at ¶ 10.

For all OSS functions other than provisioning, the FCC also requires that the LEC explain with specificity why it believes a particular OSS modification or upgrade qualifies as eligible for cost recovery.¹¹ In calculating eligible costs, BA-NJ identifies administrative and support systems modifications which it contends are necessary to the implementation of presubscription. BA-NJ posits that it made modifications to ten customer contract/services order processing systems, five billing and tracking systems, and eleven network operations systems.¹² However, BA-NJ did not provide any specific explanation as to why its claimed costs are eligible costs for recovery, nor did it provide any supporting documentation to show the manner in which these costs were allocated, consistent with the FCC's standards. BA-NJ simply assumes that all modifications, including modifications not yet implemented, should be eligible costs for recovery. This is not the case. BA-NJ has not sustained its burden of proof for inclusion of these costs as eligible EARC costs.

For determining eligible signaling and switching costs, the FCC requires LECs to use cost tracking systems in lieu of cost models to make estimates. Cost tracking systems provide verifiable data on actual and planned expenditures which precludes a LEC from recovering embedded costs already recovered through other recovery mechanisms.¹³ If a LEC uses cost models, the FCC requires the LEC to explain how the use of cost models would produce more accurate estimates of the incremental costs generated by number portability than would be produced by an analysis of actual and planned expenditures.¹⁴ BA-NJ did not use or implement cost tracking techniques across

¹¹ *Id.*

¹² See BA-NJ's Initial Brief at page 8.

¹³ See *Investigation Order* at ¶¶ 16-17

¹⁴ *Id.* at 17.

the board when it implemented IntraLATA toll presubscription. Likewise, it provided no support as to why the use of cost estimates is more accurate and reliable than the use of cost tracking techniques. As discussed in the Ratepayer Advocate's Initial Brief, BA-NJ has not met its burden of proof for including switch translation costs as eligible costs.¹⁵ Again, BA-NJ has improperly inflated and overstated its EARC recovery costs and its cost support must be rejected.

¹⁵ See Ratepayer Advocate's Initial Brief at 21-23.

The FCC states that general upgrade costs are not eligible costs for purposes of cost recovery.¹⁶ The FCC places the burden of proof on the LEC to separately identify and distinguish eligible recoverable costs from general upgrade costs which are recouped through standard recovery mechanisms. To comply with this requirement, a LEC must disclose the methodology used to calculate generic upgrade costs and the allocation of costs between eligible and non-eligible. Ineligible costs are not recoverable in the EARC. The record in this proceeding clearly shows that BA-NJ included non-eligible general upgrade costs and improperly inflated its EARC recovery. BA-NJ erroneously assumes that all generic upgrade costs are 100% allocable to EARC. For the most part, BA-NJ provides only partial information which is insufficient to apportion generic upgrades between eligible and non-eligible costs. By way of example, BA-NJ provides no documentation identifying the specific features for three out of four software and hardware upgrades. Therefore, no allocation is possible and one cannot thoroughly review and analyze this rate element. For the fourth upgrade, a Siemens upgrade, BA-NJ's documentation shows that features unrelated to intraLATA toll presubscription are present in the software.¹⁷

Therefore, BA-NJ should have performed an allocation between eligible and non-eligible costs and disclosed its methodology. BA-NJ did not do either. Indeed, BA-NJ has no support for including 100% of the upgrade costs as eligible costs related to intraLATA toll presubscription. Therefore, BA-NJ's proposed EARC recovery is inflated and overstated and must be rejected. As a

¹⁶ See *Investigation Order* at ¶¶ 47 and 48.

¹⁷ See Ratepayer Advocate's Initial Brief at 23-24.

conservative adjustment, the Ratepayer Advocate reduced all of BA-NJ's upgrade costs included in the EARC study by 50%.¹⁸

¹⁸

Id.

As discussed in our Initial Brief, BA-NJ has sought to include advance costs, referred to as “advancement costs,” in its EARC recovery. The FCC has determined that such costs are not directly related to implementation of LNP and toll dialing parity, and are not eligible costs for recovery purposes.¹⁹ Therefore, the advancement costs claimed by BA-NJ should be removed.

CONCLUSION

In view of the foregoing, the Ratepayer Advocate respectfully requests that Your Honor adopt the recommendations of the Ratepayer Advocate and issue a Recommended Decision consistent with those recommendations.

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RATEPAYER ADVOCATE

By: _____
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Dated: April 12, 1999

¹⁹ *Id.* at 32-33.